

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: John B. Sullivan et al.
Serial No.: 08/405,454
Confirmation No.: 6004
Filed: March 15, 1995
For: ANTIVENOM COMPOSITION CONTAINING FAB FRAGMENTS
Examiner: R. B. Schwadron
Art Unit: 1644

Certificate of Electronic Filing Under 37 CFR 1.8

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4).

Dated: October 26, 2009

Electronic Signature for: /Eileen M. MacKenzie/

REQUEST FOR RECONSIDERATION OF HOLDING OF ABANDONMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

As discussed with the Examiner, Applicant requests that the Notice of Abandonment mailed September 23, 2009 be withdrawn because the application has not in fact become abandoned. *See* MPEP § 711.03 (“When advised of the abandonment of his or her application, applicant may . . . ask for reconsideration of such holding, if he or she disagrees with it on the basis that there is no abandonment in fact . . .”). The Notice indicates the application is abandoned because the period for seeking court review of the Board’s decision mailed June 15, 2009 has expired.

As discussed with the Examiner, however, Applicant did in fact seek court review of the Board’s decision, and Applicant did so within the two months of the Board’s Decision, in accordance with 35 U.S.C. § 145 and 37 C.F.R. § 1.304(a). Unlike an appeal to the Federal Circuit under 35 U.S.C. § 141, or a civil action in an interference under 35 U.S.C. § 146, there is no requirement to file a Notice in the PTO when a civil action to obtain a patent under 35 U.S.C. § 145 is filed. *Compare* 37 C.F.R. §§ 1.302(a) and 1.303(c) *with* § 1.303(a).

The 120-day time-period for serving the complaint on the PTO has not yet lapsed. *See* Fed. R. Civ. P. 4(m). In light of the erroneous Notice of Abandonment, Applicant files herewith a copy of the first page of the complaint in the § 145 action. The complaint is stamped at the top with the court's docket number and indicates the complaint was filed on August 14, 2009. Applicant is filing this page to expedite withdrawal of the erroneous Notice of Abandonment, and to allow the PTO to update its records. *See* MPEP § 1216.02 ("When a 35 U.S.C. 145 civil action is filed, a notice thereof is placed in the application or reexamination file . . ."). Applicant does not intend this submission to be construed as service of the complaint, nonetheless the summons, upon the PTO.

Applicant believes that no fee is due. The Director is hereby authorized to charge any deficiency or credit any overpayment in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 23/2825, under Docket No. P0786.70000US05.

Dated: October 26, 2009

Respectfully submitted,

By 

Michael T. Siekman

Registration No.: 36,276

WOLF, GREENFIELD & SACKS, P.C.

Federal Reserve Plaza

600 Atlantic Avenue

Boston, Massachusetts 02210-2206

617.646.8000